

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT BROWN,

Petitioner,

V.

RICHARD MORGAN,

## Respondent.

Case No. C05-5280 FDB

## ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING PETITION

The Magistrate Judge recommends that this habeas petition be dismissed as untimely.

Petitioner has not filed an objection. See, 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. Petitioner has filed successive untimely petitions in State Court, the most recent being dismissed by the Washington State Supreme Court on statute of limitations grounds. As detailed by the Magistrate Judge, the one-year statute of limitations, 28 U.S.C. § 2244(d), began to run on April 24, 1996 and expired on April 24, 1997 without interruption. Petitioner did not file his habeas corpus petition with this Court until March 12, 2005. The statute of limitations has long since expired. Moreover, the untimely state court petition did not toll the federal statute of limitations.

See, Pace v. DiGuglielmo, 544 U.S. \_\_\_, 125 S. Ct. 1807 (2005).

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The Court, having reviewed the petition, the Report and Recommendation of the Hon. Karen L. Strombom, United States Magistrate Judge, and the remaining record, does hereby find and Order:

- (1) The Court adopts the Report and Recommendation;
  - (2) The petition for writ of habeas corpus is DENIED; and
  - (3) The Clerk is directed to send copies of this Order to petitioner, to counsel for respondent, and to the Hon. Karen L. Strombom.

DATED this 5<sup>th</sup> day of June, 2006.

  
FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE

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